UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

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Filed: March 16, 2015

Ms. Patricia Steele
Huron Valley Complex - Women
3201 Bemis Road
Ypsilanti, MI 48197

Re: Case No. 14-2309, *Patricia Steele v. Millicent Warren*
Originating Case No. : 4:11-cv-12064

Dear Ms. Steele,

The Court issued the enclosed (Order/Opinion) today in this case.

Sincerely yours,

s/Roy G. Ford
Case Manager
Direct Dial No. 513-564-7016

cc: Ms. Andrea M. Christensen-Brown
Mr. David J. Weaver

Enclosure

No mandate to issue

No. 14-2309

UNITED STATES COURT OF APPEALS
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PATRICIA STEELE,

Petitioner-Appellant,

v.

MILLICENT WARREN, Warden,

Respondent-Appellee.

O R D E R

Patricia Steele, a Michigan prisoner proceeding pro se, appeals the district court's denial of her 28 U.S.C. § 2254 habeas corpus petition and moves this court for a certificate of appealability (COA).

In 2008, a jury convicted Steele of operating a motor vehicle while intoxicated causing death; operating a motor vehicle while intoxicated causing serious impairment of a body function; operating a motor vehicle while intoxicated, second offense; and transporting an open container of alcohol. Steele is currently serving an aggregate sentence of seven to fifteen years of imprisonment. Steele's convictions arose out of a head-on collision between her minivan and another vehicle that resulted in serious injury to the driver of the other vehicle and the death of the vehicle's passenger. At trial, Steele did not deny that she had been intoxicated at the time of the accident. Instead, she claimed that an unidentified third car had struck her vehicle from behind causing her to veer into the oncoming lane of traffic. The Michigan Court of Appeals affirmed Steele's conviction, *People v. Steele*, No. 285641, 2010 WL 99032 (Mich. Ct. App. Jan. 12, 2010), and the Michigan Supreme Court denied leave to appeal, *People v. Steele*, 783 N.W.2d 378 (Mich. 2010).

As grounds for federal habeas relief, Steele asserted that the police and the prosecution: (1) failed to conduct an adequate investigation; (2) failed to endorse a res gestae witness, Julie Gauthier; (3) fabricated evidence; (4) coerced an eyewitness, Julie Gauthier, to provide false testimony; and (5) elicited perjured testimony about whether a third vehicle hit the minivan. The district court denied all of Steele's claims on the merits and declined to issue a COA.

Steele now seeks a COA on her claim that the state elicited false testimony at trial through coercion and coaching of Gauthier. Steele does not raise any of her other claims in her COA application; therefore, she has waived review of those claims in this court. *See Jackson v. United States*, 45 F. App'x 382, 385 (6th Cir. 2002); *Elzy v. United States*, 205 F.3d 882, 886 (6th Cir. 2000).

To obtain a COA, a petitioner must make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). To satisfy this standard, a petitioner must demonstrate "that jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003).

Steele maintains that two of the prosecution's witnesses, Gauthier and Deputy Travis Horn, presented false testimony at trial. She asserts that, at the request of the prosecutor, Horn interviewed Gauthier shortly before trial and, during this interview, coerced Gauthier into changing her statement from one involving a third vehicle that struck Steele's to one not involving a third vehicle. The district court held that Steele was not entitled to habeas relief on this claim because she did not show that any false testimony was presented.

When the government knowingly uses perjured testimony to obtain a conviction or fails to correct false testimony when it arises, and there is a reasonable likelihood that the false testimony could have affected the judgment of the jury, the conviction must be set aside. *See Rosencrantz v. Lafler*, 568 F.3d 577, 583 (6th Cir. 2009). "To prove that the prosecutor's failure to correct false testimony violated due process, a petitioner must demonstrate that: (1) the statement was actually false; (2) the statement was material; and (3) the prosecution knew it was false." *Id*. at 583-84.

In her habeas petition, Steele pointed to several inconsistencies between Gauthier's initial statement, her interview with Horn, and her testimony at trial. She, however, failed to point to anything in the record to show that either Horn's or Gauthier's testimony was actually false. "[M]ere inconsistencies in testimony by government witnesses do not establish knowing use of false testimony." *Brooks v. Tennessee*, 626 F.3d 878, 895 (6th Cir. 2010) (quoting *Coe v. Bell*, 161 F.3d 320, 343 (6th Cir. 1998)). Moreover, the jury heard all of the evidence about the alleged third car, including that Gauthier initially reported that a third car had hit Steele's minivan. In addition, defense counsel extensively cross-examined both Gauthier and Horn about the changes to her story, and the entire recording of Horn's interview of Gauthier was played in court, leaving the jury to assess the witnesses' credibility and determine which version of the story was the truth. Reasonable jurists could not disagree with the district court's denial of relief on this claim.

Accordingly, Steele's application for a COA is denied.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk